

Message Text

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SUBJ: GOC WHITE PAPER ON BANKING LEGISLATION

1. SUMMARY. GOC WHITE PAPER ON BANKING LEGISLATION ISSUED AUGUST 23 PROPOSES EXTENSIVE CHANGES IN BANK ACT DUE TO EXPIRE JUNE 30, 1977. PROPOSALS INCLUDE, INTER ALIA, ALLOWING FOREIGN BANKS IN CANADA TO OPERATE AS BANKS BUT UNDER STRICT REGULATIONS, ESTABLISHING NEW NATIONAL CHECK CLEARING SYSTEM, EASING RULES FOR ESTABLISHING BANKS, PERMITTING BANKS TO ENGAGE IN FACTORING AND LEASING OPERATIONS, LIMITING BANKS OWN DATA PROCESSING SERVICES, CURTAILING BANKS' ROLE IN CORPORATE SECURITIES ISSUANCE, AND MAKING BANKING LAW CONFORM WITH OTHER LEGISLATION DEALING WITH CORPORATIONS, COMPETITION AND BANKRUPTCY. END SUMMARY.

2. UNDER AEGIS OF DEPARTMENT OF FINANCE, GOC ISSUED WHITE PAPER ON AUGUST 23 ON CANADIAN BANKING LEGISLATION.

WHITE PAPER PROPOSES "SIGNIFICANT LEGISLATION

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CHANGES DESIGNED TO ENCOURAGE MORE COMPETITION IN

CANADA'S FINANCIAL SYSTEM." COMMENTS ON PROPOSALS ARE TO BE SUBMITTED TO MINISTER OF FINANCE BEFORE OCTOBER 15, 1976, AND GOC WILL INTRODUCE LEGISLATION THIS FALL INCORPORATING CHANGES TO BANK ACT, DUE TO EXPIRE JUNE 30, 1977.

3. AFTER REVIEWING GROWTH OF FINANCIAL INSTITUTIONS IN CANADA SINCE 1967 AND RECENT DEVELOPMENTS IN OPERATIONS OF "NEAR-BANKS," WHITE PAPER CONCLUDED THAT REGULATORY ADJUSTMENTS TO BANK ACT WERE NECESSARY TO PROMOTE AND MAINTAIN "STRONG NATIONAL FINANCIAL AND PAYMENTS SYSTEM THAT IS EFFECTIVELY CONTROLLED BY CANADIANS AND THEIR AUTHORITIES AND THAT RESPONDS TO STRONG COMPETITIVE FORCES WHICH ARE NOT HAMPERED OR DISTORTED BY UNDUE CONCENTRATION OR CONFLICT OF INTEREST." PAPER THEN PROPOSES FOLLOWING CHANGES TO BANK ACT:

A. CANADIAN PAYMENTS SYSTEM -

DECLARING PRESENT SYSTEM OF CHECK CLEARING, WHICH IS OPERATED BY CANADIAN BANKERS' ASSOCIATION, TO BE INEQUITABLE AND OUTDATED, PAPER PROPOSES ESTABLISHMENT OF CANADIAN PAYMENTS ASSOCIATION BY COMPANION LEGISLATION TO BANK ACT. ALL FINANCIAL INSTITUTIONS ACCEPTING DEPOSITS TRANSFERABLE BY ORDER WOULD BE REQUIRED JOIN ASSOCIATION EITHER AS "CLEARING" OR "NON-CLEARING" MEMBER, MAINTAIN MINIMUM RESERVES, BE INSURED BY DESIGNATED ORGANIZATIONS, AND MEET CERTAIN REPORTING REQUIREMENTS.

B. BANKING ENTRY -

IN ORDER FACILITATE ESTABLISHMENT OF NEW CANADIAN DOMESTIC BANKS, PAPER PROPOSES DROPPING PRESENT REQUIREMENT THAT NEW BANKS BE ESTABLISHED BY SPECIAL ACT OF PARLIAMENT. INSTEAD, BANK CHARTERS WOULD BE PERMITTED BY LETTERS PATENT ISSUED BY GOVERNOR IN COUNCIL. PROVINCIAL GOVERNMENTS WOULD BE ALLOWED HOLD 25 PERCENT OF SHARES OF NEW BANKS, AND EXISTING FINANCIAL INSTITUTIONS COULD CONVERT TO CHARTERED BANKS.

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C. FOREIGN BANKS -

AFTER REVIEWING RECENT GROWTH OF FOREIGN FINANCIAL INSTITUTIONS IN CANADA (ABOUT 120 EXISTING CANADIAN CORPORATIONS IN WHICH FOREIGN BANKS HAVE EQUITY INTEREST), LACK OF EXISTING REGULATIONS FOR THEM, AND NEED TO "ENCOURAGE" FOREIGN BANKING FOR THEIR "ADDITIONAL COM-

PETITIVE AND INNOVATIVE FORCES," PAPER PROPOSES THAT
FOREIGN BANKS BE ALLOWED TO OPERATE AS BANKS IN CANADA
BUT WITH RESTRICTIONS. PROPOSALS ON FOREIGN BANKS
INCLUDE:

- 1) INCORPORATION OF SUBSIDIARY OF FOREIGN BANK
OR CHARGED BANK UNDER BANK ACT. MINISTER OF FINANCE "WILL
ENCOURAGE AND EXPECT FOREIGN BANKS WHO HAVE...
BANKING OPERATIONS ON ANY SIGNIFICANT SCALE TO
APPLY FOR A CHARTER."
- 2) FOREIGN BANKS SEEKING LIMITED OPERATIONS WILL
BE ABLE MAKE EQUITY INVESTMENTS IN NON-BANK AFFILIATES
BUT WILL BE REQUIRED FILE REPORTS ON ACTIVITIES.
HOWEVER, UNLESS SPECIFICALLY AUTHORIZED, FOREIGN
AFFILIATES WILL BE DENIED POSSIBILITY OF BORROWING
IN CANADIAN MARKET WITH GUARANTEE OF FOREIGN PARENT.
- 3) REPRESENTATIVE OFFICES OF FOREIGN BANKS
MUST REGISTER WITH INSPECTOR GENERAL OF BANKS.
- 4) ESTABLISHMENT OF BRANCHES OR AGENCIES OF
FOREIGN BANKS WILL BE PRECLUDED. FOREIGN BANK SUBSIDIARIES
WILL BE REQUIRED HAVE BOARD OF DIRECTORS AT LEAST HALF OF WHICH
ARE CANADIAN.
- 5) PARENT BANK OF FOREIGN BANK SUBSIDIARY WILL
NOT BE ALLOWED ESTABLISH OR RETAIN ANY OTHER AFFILIATE
IN CANADA, OTHER THAN THOSE PERMITTED TO BANK SUB-
SIDIARY ITSELF.
- 6) LIMITATIONS WILL BE PLACED ON GROWTH AND SIZE OF
FOREIGN BANKS' SUBSIDIARIES UNLESS BANK SELLS ITS
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SHAREHOLDINGS IN EXCESS OF 10 PERCENT TO CANADIANS.

- 7) MINIMUM AUTHORIZED CAPITAL WILL BE \$5 MILLION

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OF WHICH \$2.5 MILLION TO BE FULLY PAID. SIZE OF
SUBSIDIARY LIMITED TO 20 TIMES AUTHORIZED CAPITAL.

)8 TOTAL OPERATIONS OF FOREIGN BANKS LIMITED TO
15 PERCENT OF TOTAL COMMERCIAL LENDING IN CANADA.

9) "IT WOULD BE EXPECTED THAT CANADIAN BANKS
WOULD BE GIVEN COMPARABLE BANKING OPPORTUNITIES IN
THE HOME JURISDICTION OF THOSE FOREIGN BANK SUU-
SIDIARIES ESTABLISHED IN CANADA."

D. BANK BUSINESS POWERS AND REGULATIONS -

1) BANKS WOULD BE ALLOWED TO ENGAGE IN FINANCIAL
LEASING OF EQUIPMENT, SUBJECT TO CERTAIN REGULATIONS
PRESCRIBED BY GOVERNOR IN COUNCIL.

2) BANKS WOULD BE SPECIFICALLY AUTHORIZED TO
ENGAGE IN FACTORING (COLLECTION OF ACCOUNTS RECEIVABLE).

3) EXISTING LIMITS (10 PERCENT OF BANK'S CANADIAN
DEPOSIT LIABILITIES AND DEBENTURES) ON HOLDINGS OF
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CONVENTIONAL RESIDENTIAL MORTGAGES WOULD BE REMOVED.

4) BANKS WOULD BE REQUIRED REDUCE THEIR OWNERSHIP
IN ANY DATA PROCESSING FIRM TO MAXIMUM OF 10 PERCENT.

5) POWER OF BANKS TO UNDERWRITE CORPORATE

SECURITIES WOULD BE WITHDRAWN, BUT BANKS WILL STILL BE PERMITTED DISTRIBUTE CORPORATE SECURITIES AS MEMBERS OF SELLING GROUP.

6) BANKS WOULD BE ALLOWED SELL MUTUAL FUNDS BUT WOULD NOT BE ALLOWED MANAGE SUCH FUNDS. BANKS WOULD BE RESTRICTED IN OFFERING REGISTERED RETIREMENT SAVINGS PLANS AND REGISTERED HOME OWNERSHIP SAVINGS PLANS.

7) EXCEPT AS AUTHORIZED BY BANK ACT, BANKS WILL NOT BE PERMITTED ACQUIRE MORE THAN 10 PERCENT OF VOTING SHARES OF OTHER CANADIAN CORPORATIONS. TEMPORARY JOINT VENTURES WITH BANK HOLDING UP TO 50 PERCENT WILL BE PERMITTED, BUT BANKS MUST DISPOSE OF ANYTHING OVER 10 PERCENT WITHIN TWO YEARS.

8) BANKS WILL BE ALLOWED SELL GOVERNMENT LOTTERY, URBAN TRANSIT, AND PUBLIC SERVICE TICKETS.

E. BANK CORPORATE POWERS AND REGULATIONS -

WHITE PAPER MAINTAINS THA FEDERAL LAW REGULATING AFFAIRS OF MOST CORPORATIONS HAS RECENTLY UNDERGONE "SIGNIFICANT REVISIONS," AND THEREFORE BANK ACT MUST BE CONSISTANT WITH OTHER GENERAL ACTS. TO THIS END, PAPER PROPOSES THAT BANK ACT BE AMENDED TO INCLUDE SOME FEATURES OF CANADA BUSINESS CORPORATIONS ACT DEALING WITH DUTIES, POWERS, RESPONSIBILITIES AND LIABILITIES OF DIRECTORS AND WITH ISSUANCE OF BANK CAPITAL STOCK. BANKS WILL ALSO BE SUBJECT TO COMBINES INVESTIGATION ACT, AND RELEVANT PORTIONS OF BANK ACT RELATED TO PROTECTION OF BORROWERS AND DEPOSITORS WILL BE SUPERCEDED BY NEW LEGISLATION BEING DEVELOPED BY DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS.

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4. INITIAL REACTION TO GOC WHITE PAPER, AS REPORTED IN PRESS, WAS FAIRLY FAVORABLE WITH BANK EXECUTIVES WHO SAID THEY AGREED WITH MANY OF PROPOSALS. EXECUTIVES OF OTHER FINANCIAL INSTITUTIONS HAD NO COMMENT UNTIL THEY COULD STUDY PAPER.

5. FINMIN MACDONALD INTERVIEWED FOR TV NEWS SAID NEW BANKING REGULATIONS PUTTING MORE COMPETITION IN INDUSTRY WOULD HAVE NO EFFECT ON HIGH INTEREST RATES SINCE RATES WERE DEPENDENT ON PRESENT MONETARY POLICY, NOT ON EXPANSION OF BANKING INDUSTRY. HE ALSO REPORTEDLY TOLD PRESS CONFERENCE ON AFTERNOON OF AUGUST 23

THAT NEW PAYMENTS SYSTEM ENVISAGES FUTURISTIC PAYMENT CARD FOR BANK CUSTOMERS TO TRANSFER FUNDS DIRECTLY FROM BANK TO APY FOR MERCHANDISE AT POINT OF SALE.
MACDONALD SAID CURRENT CREDIT CARD AND FUTURE PAYMENT CARD SYSTEMS WOULD GRADUALLY BE INTEGRATED. (SEE OTTAWA A-78 OF FEB. 10, 1975 FOR DISCUSSION OF GOC PAPER "TOWARDS AN ELECTRONIC PAYMENTS SYSTEM".)

6. EMBASSY POUCHING COPIES OF WHITE PAPER UNDER SEPARATE AIRGRAM.

7. COMMENT. ACCORDING TO PAPER, ABOUT HALF OF APPROXIMATELY 60 DOREIGN BANKS WITH EQUITY PARTICIPATION IN CANADIAN FINANCIAL INSTITUTIONS ARE U.S.- OWNED. PROPOSED LEGISLATION WILL BOTH OPEN NEW OPPORTUNITIES FOR THEM (AND OTHER U.S. BANKS) AND IMPOSE SOME NEW RESTRICTION OR OBLIGATIONS RELATING TO CURRENT ACTIVITIES. EMBASSY RECOMMENDS THAT INTERESTED WASHINGTON AGENCIES STUDY WHITE PAPER CLOSELY, SOLICIT COMMENTS FROM U.S. PROVATE BANKING SECTOR AND DEVELOP COORDINATED U.S. G. VIEWS ON WHITE PAPER FOR POSSIBLE CONSULTATIONS WITH GOC WELL BEFORE OCTOBER 15. EMBASSY INTENDS TO FOLLOW UP WITH U.S. BANKERS IN CANADA AND OTHER INTERESTED PARTIES AND WILL REPORT FURTHER ON REACTIONS.

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